Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
January 11, 2017

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * * *

In re:	BK-S-14-16060-MKN
KATHLEEN LYNNE RAY, Debtor.	Chapter 13
KATHLEEN LYNNE RAY, Plaintiff,	Adv. Proceeding No. 15-01117-MKN (Lead) (Consolidated with Adversary Proceeding No. 16-01008-MKN)
v.	
DEUTSCHE BANK AND NATIONAL, AS TRUSTEE FOR FFMLT TRUST 2005-FF8, MORTGAGE PASS-THROUGH CERTIFICATE SERIES, et al., Defendants.	Date: August 25, 2016 Time: 9:30 a.m.

ORDER ON MOTION TO DISMISS BY BANK OF AMERICA AND FIRST FRANKLIN FINANCIAL CORPORATION[1]

[1] In this Order, all references to "15ECF No." are to the numbers assigned to the documents filed in the above-captioned adversary proceeding ("Adversary Proceeding") as they appear on the adversary docket maintained by the clerk of the court. All references to "16ECF No." are to the numbers assigned to the documents filed in Adversary Proceeding No. 16-01008-MKN, which has been consolidated with this adversary proceeding pursuant to court order entered on June 21, 2016. (15ECF No. 70; 16ECF No. 50). All references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

On August 25, 2016, the court heard the Motion to Dismiss by Bank of America and First Franklin Financial Corporation (16ECF No. 45) ("Dismissal Motion") brought by Bank of America, N.A. ("BofA") and First Franklin Financial Corporation ("First Franklin" and, together with BofA, the "Movants"). Kathleen Lynne Ray ("Plaintiff") appeared in pro se, Scott McDonald appeared on behalf of Deutsche Bank AG, Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series, Deutsche Bank USA, Matthew Schriever, Specialized Loan Servicing, LLC, and Tiffany and Bosco (collectively, the "Deutsche Parties"), and Sean Payne appeared on behalf of Melissa Hively, Joan Cook, Krystal Hall, Mary Lou Marcum, Security Connections, Inc., and Vicki Sorg (collectively, the "Hively Parties"). After arguments were presented, the matter was taken under submission.

BACKGROUND[2]

On September 9, 2014, Debtor commenced the above-captioned Chapter 13 proceeding. (ECF No. 1).

On September 24, 2014, Debtor filed, inter alia, her real property Schedule "A" listing herself as the owner of a single family residence located at 4631 Ondoro Avenue, Las Vegas, Nevada 89141 ("Ondoro Property"). (ECF No. 13).

On March 18, 2015, an Order Granting Motion for Relief from Automatic Stay for the Purpose of Eviction in favor of Deutsche National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series ("Lift Stay Order"). (ECF No. 94).

On January 13, 2016, Plaintiff filed a complaint in Adversary Proceeding No. 16-01008-MKN. (16ECF No. 1).

On February 16, 2016, Plaintiff filed a first amended complaint in Adversary Proceeding No. 16-01008-MKN. (16ECF No. 9). On March 23, 2016, Plaintiff filed an errata entitled "Errata: First Amended Adversary Complaint" against, among other parties, the Movants, the

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[2] The court takes judicial notice of all pleadings filed in Adversary Proceeding Nos. 15-01117-MKN and 16-01008-MKN, as well as the underlying bankruptcy proceeding at Case No. 14-16060-MKN.

Deutsche Parties, and the Hively Parties, which the court has construed to be a second amended complaint ("Second Amended Complaint"). (16ECF No. 17).

On June 10, 2016, Movants filed the instant Dismissal Motion. (16ECF No. 45).

On June 15, 2016, Plaintiff filed "Adversary Plaintiff's Omnibus Response and Hearing Brief as to All Pending Moitons [sic] and Joinders (#'s 28-45)." (16ECF No. 47).[3]

On June 16, 2016, Plaintiff filed "Errata: Adversary Plaintiff's Omnibus Response and Hearing Brief as to All Pending Moitons [sic] and Joinders (#'s 28-45)." (16ECF No. 48).

On June 21, 2016, the Hively Parties filed a joinder in support of the instant Dismissal Motion. (16ECF No. 49).

On June 21, 2016, the court entered its "Order on Motion to Strike Adversary Complaint ("Strike Order"). (15ECF No. 70; 16ECF No. 50). For the reasons stated in the Strike Order, the court dismissed claims for relief two through six of the Second Amended Complaint against Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series ("DBN") and Matthew Schriever ("Schriever"). In the Strike Order, the court also consolidated Adversary Proceeding No. 16-01008 with Adversary Proceeding No. 15-01117 (with Adversary Proceeding No. 15-01117 serving as the lead adversary case), and the court deemed the remainder of the Second Amended Complaint as an amended complaint filed in Adversary Proceeding No. 15-01117.[4]

On June 23, 2016, Plaintiff filed a "Supplemental Exhibit in Support of Omnibus Response and Rule 25(c) Suggestion." (15ECF No. 77).

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[3] In this June 15, 2016 filing, Plaintiff alleges that the attorneys representing the defendants should be disqualified because they suffer from various conflicts of interest. See 16ECF No. 47 at pp. 18-19. See also 15ECF No. 88 at pp. 26-27; 15ECF No. 89 at pp. 31-32. Plaintiff does not claim that these alleged conflicts arise because Plaintiff is or was a client of any such attorney. Instead, Plaintiff's allegations, if assumed to be true, would, at best, create conflicts of interest unique to the defendants that would not affect the substance of the proceedings before this court. Therefore, Plaintiff does not have standing to address these alleged conflicts of interest, and the court will not consider Plaintiff's arguments regarding the same.

[4] Unfortunately, the parties to this consolidated adversary proceeding have not consistently filed documents in the lead case.

On June 28, 2016, Plaintiff filed a "Second Errata (2:16-01008, #47, 48 & 2:15-1117, #77) and Notice of Non-Service of Defendants' Motion to Dismiss/Joinders (2:16-ap-01008, #'[sic] 45, 46, 49) and Failure to Set Hearing." (15ECF No. 78).[5]

On July 1, 2016, the Deutsche Parties filed a joinder in support of the instant Dismissal Motion. (15ECF No. 82).

On August 12, 2016, Plaintiff filed "Adversary Plaintiff's Response to Motions to Dismiss and Joinders." (15ECF No. 87).

On August 17, 2016, Plaintiff filed "Adversary Plaintiff's Second Omnibus Response and Hearing Brief As To All Pending Motions and Joinders ("Response"). (15ECF No. 88). On August 18, 2016, Plaintiff filed an errata to that Response. (15ECF No. 89).[6]

On August 23, 2016, Movants filed a supplement in support of the instant Dismissal Motion. (16ECF No. 57).[7]

On August 24, 2016, Plaintiff filed a "Notice of Ninth Circuit Action Re: Errata (#89):

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[5] In her June 28, 2016 filing, Plaintiff stated, in pertinent part, that she "has discovered Plaintiff was never served with the motions (2:16-ap-01008, #'[sic] 45, 46, 49), to be able to respond . . . ." (15ECF No. 78 at p. 1). Plaintiff's statement is incorrect because Plaintiff responded to 16ECF No. 45 on June 15, 2016 and June 16, 2016. See 16ECF Nos. 47-48. Indeed, as the "Background" section reflects, Plaintiff has filed no less than ten documents relating to 16ECF No. 45, and Plaintiff appeared at the August 25, 2016 hearing regarding 16ECF No. 45.

[6] In her August 17, 2016 and August 18, 2016 filings, Plaintiff asks the court to reinstate the automatic stay, but Plaintiff does not cite any legal authority in support thereof. See 15ECF No. 88 at pp. 22-25; 15ECF No. 89 at pp. 27-30. Nevertheless, because the court's order lifting the automatic stay entered on March 18, 2015 (ECF No. 94) ("Lift Stay Order") is currently on appeal before the United States Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") at BAP No. 15-1137, the court lacks jurisdiction to reconsider the Lift Stay Order. See Sherman v. Securities & Exch. Comm'n (In re Sherman), 491 F.3d 948, 967 (9th Cir. 2007) ("The timely filing of a notice of appeal to either a district court or bankruptcy appellate panel will typically divest a bankruptcy court of jurisdiction over those aspects of the case involved in the appeal."). Therefore, the court denies Plaintiff's request to reinstate the automatic stay.

[7] For the reasons stated in Movants' supplement, the court's reference to "First Franklin" in this Order is deemed to include all variations of First Franklin's name, including, but not limited to, "First Franklin Financial Corporation" and "First Franklin, a division of National City Bank of Indiana."

Adversary Plaintiff's Second Omnibus Response (#88) and Hearing Brief as to All Submitted/Undecided and All Pending Motions and Related Joinders." (15ECF No. 90).[8]

On August 25, 2016, Plaintiff filed a "Post-Hearing Supplement and Clarification Re: Errata (#89) Adversary Plaintiff's Second Omnibus Response (#88) and Hearing Brief As To All Submitted/Undecided and All Pending Motions and Related Joinders." (15ECF No. 93).

On August 25, 2016, the court held a hearing on the instant Dismissal Motion, after which the matter was taken under submission.

On September 20, 2016, Plaintiff filed a "Supplement Exhibit Re: Errata (#89) Adversary Plaintiff's Second Omnibus Response (#88) and Hearing Brief as to All Submitted/Undecided and All Pending Motions and Related Joinders." (ECF No. 94).[9]

ALLEGATIONS OF PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff alleges that since 2001, she has occupied and owned the Ondoro Property. See

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[8] In her August 24, 2016 filing, Plaintiff provided notice of the "Stay in the Errata (#89): Second Omnibus Brief of Ninth Circuit hearing and oral arguments set for October 21, 2016, a matter which will impact the decisions in this case (see Exhibit)." (15ECF No. 90 at p. 1). Plaintiff did not include a copy of the exhibit discussed in the August 24, 2016 filing. Nevertheless, the court assumes that Plaintiff's reference to a "Ninth Circuit hearing" was intended to refer to BAP No. 15-1137 pending before the United States Bankruptcy Appellate Panel of the Ninth Circuit ("BAP"), where the BAP scheduled oral argument on Plaintiff's appeal of the Lift Stay Order for October 21, 2016. The court notes that Plaintiff did not obtain a stay pending appeal of the Lift Stay Order. Therefore, the court's jurisdiction to rule on the Motion is not, as Plaintiff implies, constrained by the BAP's recent scheduling of Plaintiff's appeal for oral argument. See In re Sherman, 491 F.3d at 967 ("The bankruptcy court retains jurisdiction over all other matters that it must undertake to implement or enforce the judgment or order, although it may not alter or expand upon the judgment . . . . If a party wants to stay all of the proceedings in bankruptcy court while an appeal is pending, it must file a motion for a stay.") (citations and quotations omitted). The court additionally notes that despite Plaintiff's appeal of the Lift Stay Order, Plaintiff voluntarily submitted herself to this court's jurisdiction when she filed the present adversary proceeding, yet Plaintiff now, for strategic purposes, seeks to defensively assert a litigation hold based on the same appeal. Despite Plaintiff's pro se status, the court will not tolerate such litigation tactics, and the court will consider sanctions if Plaintiff continues to engage in the pattern of litigation subterfuge she currently exhibits.

[9] Plaintiff's September 20, 2016 filing attached a letter from BofA, dated September 8, 2016, which purports to represent that BofA "received a full payoff of [Plaintiff's] promissory note, home equity agreement, or other instrument of indebtedness . . . ." Plaintiff did not explain the significance of this letter, and the court finds and concludes that neither this letter nor the information it purports to represent satisfies any of the factors under FRCP 59 or 60(b).

Second Amended Complaint at ¶¶ 14-15. Plaintiff alleges that between January 2006 through February 2009, some or all of the Movants, some or all of the Deutsche Parties, and some or all of the Hively Parties, among other persons and entities, were involved in either improperly forging, assigning, and/or recording documents affecting Plaintiff's interest in the Ondoro Property. See Second Amended Complaint at ¶ 17. On July 21, 2010, DBN obtained title to the Ondoro Property pursuant to a trustee's sale and a recorded foreclosure deed. See Second Amended Complaint at ¶ 20. Plaintiff subsequently "commenced a series of actions to reclaim title." See Second Amended Complaint at ¶ 20. "The original state cause of action was dismissed for procedural defect in service rendering the state district court without personal or subject matter jurisdiction, affirmed by the Nevada State Supreme Court[,]" and Plaintiff's subsequent actions were "ruled 'res judicata.'" See Second Amended Complaint at ¶ 21. On August 27, 2014, DBN, by and through its attorneys, obtained a temporary writ of restitution from the Las Vegas Justice Court in Case No. 14C008115.[10] See Second Amended Complaint at ¶ 24. "The State District Court attempted to avoid hearing the state appeal in violation of *Lippis v. Peters*, 112 Nev. 1008, 921 P.2d 1248 (1996) and constitutional precepts of Due Process." See Second Amended Complaint at ¶ 32.

Plaintiff alleges that "[Matthew] Schriever, knowing Plaintiff to be a Senior and believing Plaintiff was no longer represented, acted in pattern and practice of targeting seniors without representation, and on behalf of and in concert with [DBN] and [DBN's] agent, Paul-Colten Smith, and the Las Vegas Township Constable's Office, to secure an illegal lockout in an attempt to circumvent Plaintiff's right to have the case heard on the merits." See Second Amended Complaint at ¶ 29. Plaintiff alleges that "on May 28, 2015, while the 62 year old Plaintiff was appearing in her official capacity (Ms. Senior Nevada) at a veteran's ceremony hosted by Nevada Governor Sandoval, the illegal lockout was performed by the Las Vegas Township Constable's Office under LVJC Case 14C008115 [sic] by the direction of Schriever, [DBN], and [DBN's] agent, Paul-Colten Smith." See Second Amended Complaint at ¶ 30.

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[10] Plaintiff listed the case number as being "14C08115" in the Second Amended Complaint, but the correct case number is "14C008115."

Plaintiff alleges that she brought "the fraud to the attention of the Constable, Richard Forbuss and Sharon Graziano, [but] said individuals refused to act to restore Plaintiff to her property." See Second Amended Complaint at ¶ 31. Plaintiff alleges that "[t]he real property was sealed, but on June 4, 2015, Defendant Deutsche through its agents admitted wrongful lockout and restored the Plaintiff to the property." See Second Amended Complaint at ¶ 33.

APPLICABLE LEGAL STANDARDS

The Dismissal Motion is brought pursuant to FRCP 12(b)(6), applicable in adversary proceedings through FRBP 7012. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. citing Twombly, 550 U.S. at 556. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Iqbal, 556 U.S. at 678 quoting Twombly, 550 U.S. at 557.[11] "[L]eave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleadings could not possibly cure the deficiency." DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

DISCUSSION

Plaintiff alleges six claims for relief in her Second Amended Complaint. As stated earlier, claims two through four previously have been dismissed without prejudice and claims five and six have been dismissed with prejudice as against DBN and Schriever. For the reasons discussed in more detail below, the court now (1) dismisses claim for relief one with prejudice against DBN, Schriever, Movants, the Hively Parties, and the remaining Deutsche Parties; (2) dismisses claims for relief five and six with prejudice against Movants, the Hively Parties, and the remaining Deutsche Parties; and (3) dismisses claims for relief two through four without prejudice against Movants, the Hively Parties, and the remaining Deutsche Parties due to this court's lack of subject matter jurisdiction.[12]

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[11] "[T]he Court 'may . . . consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment.'" Dichter-Mad Family Partners, LLP v. U.S., 709 F.3d 749, 762 (9th Cir. 2013), quoting U.S. v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003).

I. Claim for Relief One (Documents Void Ab Initio/Victim of Crime).

In claim for relief one, Plaintiff alleges in her Second Amended Complaint that some or all of the Movants, the Deutsche Parties, and the Hively Parties engaged in transfers and assignments of, among other things, loan documents regarding the Ondoro Property that were invalid and void.[13]

First, as Movants correctly argue, Plaintiff lacks standing under Nevada law to challenge any alleged defects in transfers and assignments that occurred by, and among, any of the defendants. See Smith v. Accredited Home Lenders, 2016 WL 1045507, at *3 (D. Nev. March 15, 2016); Wood v. Germann, 331 P.3d 859, 861 (Nev. 2014) (per curiam). Plaintiff's reliance on Newman v. Bank of New York Mellon, 2016 WL 2803123, at *1 (9th Cir. May 13, 2016) and Yvanova v. New Century Mortgage Corp., 365 P. 3d 845 (Cal. 2016) is misplaced because those cases involve a borrower's standing under California law. Nevada law, and not California law, applies in this case.

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[12] Movants argue that claim for relief one is essentially the only claim asserted by Plaintiff against the Movants. However, because Plaintiff generically uses the word "Defendants" throughout the Second Amended Complaint, the court, for the avoidance of doubt, deems all six claims for relief as being brought against Movants, the Hively Parties, and the Deutsche Parties.

[13] Because Plaintiff's allegations involve pre-petition actions, claim for relief one constitutes property of the estate under Section 541(a) over which the court has jurisdiction to adjudicate. See Yan v. Fu (In re Yan), 2016 WL 1719769 (9th Cir. April 29, 2016). The court notes that Plaintiff never disclosed any prepetition claims as an asset in her current Chapter 13 proceeding. See ECF No. 13, Schedule "B" and ECF No. 33, Amended Schedule "B." Plaintiff also filed two prior voluntary bankruptcy proceedings in this district: Case No. 09-14228 and Case No. 11-25171. The former case was filed under Chapter 7 on March 25, 2009, and Plaintiff's personal property Schedule "B" did not disclose any claims or causes of action of any nature, nor did her exemption Schedule "C" remove through uncontested exemption any such claims as property of her Chapter 7 estate. Plaintiff received her Chapter 7 discharge on July 28, 2009. The latter case was filed under Chapter 13 on September 27, 2011, and voluntarily converted to Chapter 7 on October 19, 2011. Plaintiff's personal property Schedule "B" similarly did not disclose any claims or causes of action of any nature, nor did her exemption Schedule "C" attempt to remove any such claims as assets of her bankruptcy estate. The latter case was dismissed by an order entered on July 30, 2012, however, because the Plaintiff was not eligible to receive another Chapter 7 discharge at the time the latter case was filed. A debtor's assertion of claims that were not disclosed in a prior bankruptcy proceeding ordinarily are barred by judicial estoppel. See, e.g., An Quin v. Cty. of Kaui Dep't. of Transp., 733 F.3d 267, 271 (9th Cir. 2013). Likewise, assets undisclosed in a Chapter 7 proceeding are not abandoned when a case is closed and remain property of the Chapter 7 estate. See 11 U.S.C. § 554(d).

Second, as Movants correctly argue, claim for relief one is barred by res judicata. The court takes judicial notice of the following:

> (1) On May 28, 2009, Plaintiff filed a complaint in the Eighth Judicial District Court of Clark County, Nevada ("State Court") at Case No. A-09-591269-C ("State Court Complaint") alleging several causes of action against, among other parties, DBN and First Franklin Loan Services, regarding their efforts to foreclose on the Ondoro Property. See Motion at Ex. 1.
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> (2) On October 8, 2009, State Court Judge Valerie Adair dismissed the State Court Complaint with prejudice against, among other parties, DBN and First Franklin Loan Services ("State Court Dismissal Order"). See Motion at Ex. 2.
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> (3) On February 15, 2012, the Nevada Supreme Court affirmed the State Court Dismissal Order. See Motion at Ex. 3.
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> (4) First Franklin Loan Services was the dba for Home Loan Services, Inc.
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> (5) On or about October 16, 2010, Home Loan Services, Inc. merged with BAC Home Loans Servicing, LP.
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> (6) On or about July 1, 2011, BAC Home Loans Servicing, LP merged with and into BofA.
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> (7) "On February 10, 2011, [DBN] filed an unlawful detainer action in Las Vegas Justice Court[, and] Plaintiff's appeals were unsuccessful." See Ray v. Deutsche Bank Nat'l Trust Co., 2012 WL 4092712, at *1 (D. Nev. Sept. 17, 2012).
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> (8) On April 10, 2012, Plaintiff filed a complaint against DBN in the United States District Court for the District of Nevada ("District Court") at Case No. 2:12-cv-00581-KJD-CWH (the "District Court Complaint") alleging several causes of action regarding DBN's efforts to foreclose on the Ondoro Property. See Motion at Ex. 7.
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> (9) On September 17, 2012, District Court Judge Kent J. Dawson entered

an order dismissing the District Court Complaint against DBN because the State Court Dismissal Order as well as Plaintiff's unsuccessful efforts in the unlawful detainer action foreclosed the causes of action alleged in the District Court Complaint under the doctrine of claim preclusion ("District Court Dismissal Order"). See Ray, 2012 WL 4092712 at *2.

(10) On January 15, 2013, the Ninth Circuit affirmed the District Court Dismissal Order. See Motion at Ex. 8.

The court is guided by the analysis and conclusion in the District Court Dismissal Order, and the court adopts and incorporates the same analysis and conclusion in this Order. Nevertheless, the court will provide more detail for the pro se Plaintiff's benefit.

"'It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered' under the Constitution's Full Faith and Credit Clause and under 28 U.S.C. § 1738." Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007), quoting Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). To establish claim preclusion under Nevada law, the court must find that "(1) there has been a valid, final judgment in a previous action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and (3) privity exists between the new defendant and the previous defendant *or* the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff cannot provide a 'good reason' for failing to include the new defendant in the previous action." Weddell v. Sharp, 350 P.3d 80, 85-86 (Nev. 2015) (emphasis in original). All three factors are satisfied in this case.

The first factor is satisfied because the State Court Dismissal Order is a final order. Although the court acknowledges Plaintiff's strenuous disagreement with the outcome reached in the State Court, Plaintiff's disagreement does not vitiate the finality of the State Court Dismissal Order as affirmed by the Nevada Supreme Court.

The second factor is satisfied because the present lawsuit involves similar actions that were brought, or could have been brought, in the State Court. Indeed, the nucleus of facts underlying both this lawsuit and that brought in State Court involve Plaintiff's efforts to challenge, among other things, the defendants' authority to foreclose on the Ondoro Property.

The third factor is satisfied because the parties, or their privies, were named as parties in the State Court Complaint and/or should have been named as parties in the State Court Complaint. Specifically, Plaintiff was also the named plaintiff in the State Court Complaint. BofA's predecessor, Home Loan Services, Inc. d/b/a First Franklin Loan Services, was also a named party in the State Court Complaint. First Franklin is in privity with BofA because, as Plaintiff alleged in her Second Amended Complaint, First Franklin is "a division" of BofA. See Second Amended Complaint at ¶ 11(a). Alternatively, First Franklin, as well as the Deutsche Parties and the Hively Parties, should have been included as defendants in the State Court Complaint because, according to Plaintiff's allegations in the Second Amended Complaint, these parties engaged in actions that contributed to the wrongful actions alleged in the State Court Complaint and largely repeated in the Second Amended Complaint.

Additionally, as stated by the District Court:

> [T]he unlawful detainer action in Justice Court precludes this action. "[O]nce a state court grants an unlawful detainer judgment in favor of a foreclosure sale purchaser, the original trustor or borrower is foreclosed under the doctrine of claim preclusion from arguing that the foreclosure sale itself was improper."

Ray, 2012 WL 4092712 at *2, quoting In re Edwards, 454 B.R. 100, 108 (B.A.P. 9th Cir. 2011). For these reasons, the court finds that the doctrine of claim preclusion forecloses claim for relief one alleged in the Second Amended Complaint.[14] Because there are no set of facts Plaintiff can

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[14] In her August 18, 2016 filing, Plaintiff states, in pertinent part:

> LVJC Cases 11C002965 and 14C008115 (foreclosure/writs of restitution) have been reopened. On August 10, 2016, the Las Vegas Justice Court agreed with the Adversary Plaintiff that final dispositions had not been entered in the 2011 and 2014 cases. Additional hearings are set for October 31, 2016 to consider dismissal with prejudice directed against Deutsche Bank for failure to comply with the courts [sic] rules. Such a dismissal will act as res judicata against Deutsche Bank, render moot any earlier state district findings and any state supreme court appeals from those state district court findings. The anticipated result will seriously impact all other federal proceedings and appeals herein.

15ECF No. 89 at pp. 7-8. Based on the court's review of the docket in the Las Vegas Justice allege to overcome the legal doctrine of claim preclusion, the court finds that amendment of the Second Amended Complaint is futile. See Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002), quoting, Polich v. Burlington Northern, Inc., 942 F.2d 1467, 1472 (9th Cir. 1991) ("'Dismissal without leave to amend is improper unless it is clear . . . that the complaint could not be saved by any amendment.'"). Therefore, claim for relief one is dismissed with prejudice against Movants, the Hively Parties, and all of the Deutsche Parties.[15]

II. Claim for Relief Five (Violation of Automatic Stay, BK Rule 2002(e) & 11 U.S.C. §362(k)).[16]

In pertinent part, Plaintiff alleges in the Second Amended Complaint the following regarding claim for relief five:

> 33. A fraud was perpetrated constituting multiple violations of state and federal constitutional provisions and statutory law, willful violations of FDCPA, adverse possession, and 11 U.S.C. §362 stay (while the bankruptcy stay was lifted in connection with the real property with a state court stay in effect, the federal stay

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Court, which may be found at https://lvjcpa.clarkcountynv.gov/Anonymous/default.aspx, it appears that the Justice Court scheduled October 31, 2016, as the date to hear and consider Plaintiff's "Motion to Reopen Improperly Closed Case and to Dismiss with Prejudice" in Case No. 11C002965. It also appears that the Justice Court scheduled September 28, 2016, as the date to hear a "Civil Order to Show Cause (Eviction or Property)" and October 31, 2016, as the date to hear Plaintiff's "Motion to Reopen Improperly Closed Case and to Dismiss With Prejudice" in Case No. 14C008115. Neither docket in the Justice Court support Plaintiff's statement that the Justice Court agreed that final dispositions were not entered in those cases. Instead, the dockets only reflect that the Justice Court has scheduled hearings on Plaintiff's motions. Neither Plaintiff's filings of new motions with the Justice Court nor the scheduling of the same for hearing are relevant to the court's analysis of the current Motion. Further, the court considers Plaintiff's argument that the rulings in the Justice Court "will act as res judicata" as an admission that further supports the court's findings regarding claim preclusion in this matter.

[15] Because Plaintiff's claim for relief one apparently is based on events that allegedly occurred before she filed her Chapter 7 proceeding on March 25, 2009, and the claim was never disclosed in her bankruptcy schedules, pursuit of the claim also appears to be subject to a judicial estoppel defense and the is an asset of her Chapter 7 estate that would be administered by a Chapter 7 trustee. See discussion at note 13, supra.

[16] The court copied verbatim Plaintiff's characterization of claim for relief five as stated in the Second Amended Complaint. The court has jurisdiction to decide issues arising under Section 362(k). See Battle Ground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124 (9th Cir. 2010) (discussing "arising under" jurisdiction).

> WAS NOT LIFTED CONCERNING ITEMS OF TANGIBLE PERSONAL PROPERTY, LEGAL DOCUMENTS AND PETS - which were left outside by the responsible parties, later named as Defendants, on hot concrete without food or water in 100+ degree heat.
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> . . .
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> 85. Plaintiff alleges Defendants Deutsche, Shriver [sic], Smith, Las Vegas Township Constable's Office, Forbuss, Graziano[,] Deputy Constable Araujo and Clark County by the lockout and sealing of the residence used civil process against and seized tangible personal property, pets and documents, and committed a clear and flagrant violation of 11 U.S.C. §362(a) by the "commencement or continuation, including the issuance or employment of process, or a judicial, administrative or other action or proceeding against the debtor." . . . In connection with the Las Vegas Township Constable's Office, Forbuss, Graziano, Deputy Constable Araujo and Clark County, such acts also constitute oppression under color of law, 42 U.S.C. §1983 and the deprivation of a property interest without due process.

See Second Amended Complaint at ¶¶ 33, 85.

In pertinent part, the court's Lift Stay Order stated:

> **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that cause exists to grant the Motion for Relief from Automatic Stay for the Purpose of Eviction in favor of Deutsche Bank.
>
> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all stay provisions are hereby terminated as to the real property commonly known as 4631 Ondoro Avenue, Las Vegas, Nevada 89141.

See Lift Stay Order at pp. 1-2.

The allegations in the Second Amended Complaint, which the court accepts as true for purposes of this Order, do not allege that Movants or the Hively Parties committed a willful violation of the automatic stay. Instead, the Second Amended Complaint alleges, in pertinent part, that some or all of the Deutsche Parties committed a willful violation of the automatic stay. However, the Second Amended Complaint does not state a claim for sanctions under Section 362(k) for a willful violation of the stay because the court's Lift Stay Order provided the Deutsche Parties with relief from the automatic stay to proceed with eviction. Plaintiff's Second Amended Complaint does not allege that the Deutsche Parties took possession of any personal belongings that were in the real property, but instead, alleges that the Deutsche Parties placed such personal belongings outside of the Ondoro Property during the course of eviction proceedings. Such actions did not violate the automatic stay but were authorized under the court's Lift Stay Order. Because the Deutsche Parties' efforts to evict Plaintiff were not subject to the automatic stay, Plaintiff could not, as a matter of law, allege any additional facts that would subject the Deutsche Parties to a violation of the automatic stay. Therefore, the court concludes that Plaintiff's amendment of claim for relief five would be futile. See Gompper, 298 F.3d at 898. The court dismisses claim for relief five of the Second Amended Complaint with prejudice against Movants, the Hively Parties, and the Deutsche Parties to the extent not previously dismissed.

III. Claim for Relief Six (Adverse Possession).[17]

In claim for relief six, Plaintiff alleges that she is the owner of the Ondoro Property by adverse possession because, in pertinent part:

> Since the original date of default in 2008, and for a period of seven (7) years, Plaintiff has occupied the subject real property, openly notoriously, exclusively, continuously, and with exception of the attempt at illegal lockout and sealing of the real property as stated in the Third Cause of Action, has remained in possession of the real property.

See Second Amended Complaint at ¶ 92. An action for adverse possession under Nevada law requires more.

NRS 40.090(1) states:

> 1. An action may be brought to determine the adverse claims to and clouds upon title to real property by a person who, personally or in combination with the person's predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for more than 15 years prior to the filing of the complaint, claiming to own the same in fee, or by any other freehold estate, against the whole world, and who has, personally or through the person's predecessors in interest, paid all taxes of every kind levied or assessed and due against the property during the 5 years next preceding the filing of the complaint, except that where clouds upon title to real property have been created by such person, and the action is brought to remove such clouds, or any of

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[17] The court has jurisdiction to decide issues regarding the extent of the debtor's or estate's interest in potential property of the estate. See Maitland v. Mitchell (In re Harris Pine Mills), 44 F.3d 1431 (9th Cir. 1995) (discussing "arising in" jurisdiction); see also Section 541; FRBP 7001(2).

> them, such period of actual, exclusive and adverse possession of such property shall be for more than 10 years. The action shall be commenced by the filing of a verified complaint averring the matters above enumerated.

To claim ownership of real property by adverse possession, NRS 40.090(1) requires Plaintiff to show that she has been in possession of the real property for fifteen years or, under certain circumstances, ten years. Plaintiff alleged in the Second Amended Complaint that she was claiming title by adverse possession due to her continued possession and maintenance over a seven year period. Plaintiff's own allegations reflect that Plaintiff cannot, as a matter of law, allege an adverse possession claim under NRS 40.090(1) when she has not, pursuant to her own allegations, maintained possession of the real property for the amount of time required under NRS 40.090(1).[18] Therefore, the court finds that Plaintiff's amendment of claim for relief six would be futile. See Gompper, 298 F.3d at 898. The court dismisses claim for relief six of the Second Amended Complaint with prejudice against Movants, the Hively Parties, and the Deutsche Parties to the extent not previously dismissed.

IV. Claims for Relief Two, Three, and Four.

Movants argue that the court lacks subject matter jurisdiction over claims for relief two through four, because the court dismissed the same claims without prejudice against some of the Deutsche Parties for the same reason. See Dismissal Motion at 9, citing 15ECF No. 56 at p. 6. Plaintiff's numerous responses to the Dismissal Motion, see 16ECF Nos. 47, 48 and 15ECF Nos.

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[18] In her post-hearing filings, Plaintiff argues, for the first time, that, for purposes of NRS 40.090(1), she has occupied the real property for fifteen years: "Plaintiff first entered into contract for the home and has been in possession of the home since 2000, with the finalized purchase and closing of escrow being April 2001." See 15ECF No. 88 at p. 19; 15ECF No. 89 at p. 24; 16ECF No. 47 at p. 15. Assuming it is appropriate for this court to consider Plaintiff's new allegations that were not otherwise alleged in the Second Amended Complaint, Plaintiff's new arguments are without merit. Plaintiff admits that she closed on her mortgage loan in April 2001, and therefore had express permission of the lender to occupy the property. Plaintiff's admitted permissive occupation of the real property until foreclosure was initiated negates an essential element of an adverse possession claim, i.e., that Plaintiff's occupancy be "hostile." See Kogan v. Silver King Mines, Inc., 833 P.2d 1141, 1143-44 (Nev. 1992); 25 Corp., Inc. v. Eisenman Chem. Co., 709 P.2d 164, 171-72 (Nev. 1985).

77, 78, 87, 88,[19] 89, 90, 93, 94, do not dispute that the bankruptcy court lacks jurisdiction over these claims. Under these circumstances, the Dismissal Motion also will be granted without prejudice as to these claims in favor of the Movants, the Hively Parties, and the Deutsche Parties to the extent not previously dismissed.[20]

IT IS THEREFORE ORDERED that the Motion to Dismiss by Bank of America and First Franklin Financial Corporation, brought by Bank of America and First Franklin Financial Corporation, Adversary Docket No. 45 (Adversary No. 16-1008-MKN), be, and the same hereby is, **GRANTED**.

Copies sent to all parties via BNC and via CM/ECF ELECTRONIC FILING

Copies sent via BNC to:

KATHLEEN LYNNE RAY
4631 ONDORO AVE.
LAS VEGAS, NV 89141

CLARK COUNTY
500 S GRAND CENTRAL PKY
LAS VEGAS, NV 89155-2215

DEPUTY CONSTABLE DOE
302 E CARSON AVE, 5TH FLR
LAS VEGAS, NV 89101

EIGHTH JUDICIAL DISTRICT COURT
c/o Clerk 200 Lewis Ave 3rd Flr
LAS VEGAS, NV 89101

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[19] In this adversary proceeding, Plaintiff has sought to have her pleadings construed liberally as an unrepresented, pro se party. In the "errata" she filed on August 17, 2016, as well as the additional "errata" she filed on August 18, 2016, however, Plaintiff represents that she actually has a sole practitioner as her counsel. See 15ECF No. 88 at p. 24; 15 ECF No. 89 at p. 28-29. On January 15, 2016, a prior order was entered barring attorney Robert B. Pool from representing any debtor in this bankruptcy court, but permitting him to apply for relief from that bar after July 31, 2016. (15ECF No. 54). There is no record that attorney Pool has ever applied for relief from that prior order and there is no appearance of record by any counsel who apparently is acting as counsel for the Plaintiff.

[20] Because the court is dismissing without prejudice claims for relief two through four, which appear to include, among other things, Plaintiff's claims under the Federal Debt Collection Practices Act, the court need not, and does not, address Plaintiff's cited case of Hernandez v. Williams, Zinman & Parham PC, ___ F.3d ___, 2016 WL 3913445 (9th Cir. July 20, 2016) regarding the Fair Debt Collection Practices Act.

RICHARD FORBUSS
302 E CARSON AVE, 5TH FLR
LAS VEGAS, NV 89101

SHARON GRAZIANO
302 E CARSON AVE, 5TH FLR
LAS VEGAS, NV 89101

RAYMOND JEREZA
7785 W SAHARA AVE, #200
LAS VEGAS, NV 89117

LAS VEGAS JUSTICE COURT
C/O CLERK
200 LEWIS AVE, 2ND FLR
LAS VEGAS, NV 89101

LAS VEGAS TOWNSHIP CONSTABLE'S OFFICE
302 E CARSON 5TH FLR.
LAS VEGAS, NV 89101

SEAN N. PAYNE
7785 W. SAHARA AVE SUITE 200
LAS VEGAS, NV 89117

SONIA RODIS
172 WELLSPRING AVE
LAS VEGAS, NV 89183

SONIA RODIS
215 E. BONANZA
LAS VEGAS, NV 89101

PAUL-COLTEN SMITH
6920 SOUTH RAINBOW AVE
LAS VEGAS, NV 89118

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